Lokklynn, Inc. *and* Amalgamated Clothing & Textile Workers Union, Northern District Joint Board. Case 18–CA–11847

February 20, 1992

DECISION AND ORDER

BY CHAIRMAN DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by the Union on July 30, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Lokklynn, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served with copies of the charge and complaint, the Respondent has failed to file an answer.

On January 6, 1992, the General Counsel filed a Motion for Summary Judgment. On January 10, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted as true and shall be so found by the Board." The undisputed allegations in the Motion for Summary Judgment also disclose that in separate but identical letters dated December 17, 1991, the General Counsel notified the Respondent and its president, Donald Lokken, that it would be given a further opportunity to file an answer until "exactly one week after delivery," and that unless an answer was received prior thereto, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Minnesota corporation with an office and place of business in Chisholm, Minnesota, has been engaged in the manufacture and nonretail sale and distribution of clothing and related products. During the calendar year ending December 31, 1990, Respondent, in the course and conduct of its business operations, sold and shipped from its Chisholm, Minnesota facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Minnesota and, during the same period, purchased and received at the same facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Minnesota. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All cutters, operators, shipping and receiving room employees, examiners, and all other related production workers employed at its Chisholm, Minnesota facility, including maintenance, services, janitorial employees, local truck drivers and helpers; excluding executives, administrators and supervisory employees as defined in the Act.

At all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the bargaining unit, and has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period from January 1, 1988, through January 1, 1991.

Since on or about February 25, 1991, and continuing to date, the Respondent has failed and refused to bargain with the Union concerning the effects of its discontinuance of operations at, and its closing of, the Chisholm, Minnesota facility. Further, since on or about March 22, 1991, the Union has requested, and the Respondent has failed and refused to provide, information that is relevant and necessary to the Union's performance of its obligation as the exclusive collective-bargaining repre-

sentative of employees in the unit.[1] Finally, the Respondent, at all times material, has refused to pay earned and accrued vacation pay to unit employees as required by the terms of its collective-bargaining agreement with the Union and, in so doing, has unlawfully repudiated the agreement.

CONCLUSIONS OF LAW

1. By failing and refusing to bargain with the Union concerning the effects of its discontinuation of operations at, and the closing of, its Chisholm, Minnesota facility, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

2. By failing and refusing to pay unit employees their earned and accrued vacation pay, as required under the terms of its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

3. By failing and refusing to provide the Union with requested information that is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of its discontinuance of operations at, and the closing of, its Chisholm, Minnesota facility, we shall order it to bargain with the Union, on request, concerning the effects of its decision. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, the Respondent shall be ordered to pay its employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on the effects on unit employees of the discontinuance and closing of the Chisholm facility; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount the employees would have earned as wages from the date on which the Respondent discontinued and closed its Chisholm facility to the time the employee secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at a rate of their normal wages when last in the Respondent's employ. See *Transmarine Corp.*, 170 NLRB 389 (1968). Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, 282 NLRB 1173 (1987).

To remedy its unlawful failure and refusal to pay unit employees their earned and accrued vacation pay, as required by the terms of its collective-bargaining agreement with the Union, the Respondent shall be ordered to make whole its unit employees for any losses resulting from its unlawful conduct as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest. *New Horizons for the Retarded*, supra.

Finally, the Respondent shall be required to furnish the Union with the information requested on or about March 21, 1991, and, in view of the closing of its Chisholm facility, will be required to mail copies of the Board's notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Lokklynn, Inc., Chisholm, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Amalgamated Clothing & Textile Workers Union, Northern District Joint Board, as the exclusive collective-bargaining representative of the employees in the bargaining unit, about the effects of the Respondent's discontinuance and closure of its Chisholm, Minnesota facility on the unit employees. The bargaining unit consists of:

[1] The Union requested the following information: (1) a list of all employees, addresses, and hours worked for a 1-year period prior to the actual date of closing; (2) financial information detailing the Company's financial situation leading to their refusal to pay contractual debts; (3) a letter setting out the intentions of the Company to comply with arbitration settlements; intent to declare bankruptcy, etc.; (4) a list of employees' wages and benefits, such as vacation, for the period 1 year prior to the actual date of closing.

All cutters, operators, shipping and receiving room employees, examiners, and all other related production workers employed at its Chisholm, Minnesota facility, including maintenance, services, janitorial employees, local truck drivers and helpers; excluding executives, administrators and supervisory employees as defined in the Act.

(b) Repudiating its collective-bargaining agreement with the Union by failing and refusing to pay unit employees their earned and accrued vacation pay as required by the terms of that agreement.

(c) Failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of employees in the unit.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of its discontinuance and closure of its Chisholm facility, and reduce to writing any agreement reached as a result of such bargaining, and pay limited backpay in the manner set forth in the remedy section of this Decision and Order, with interest.

(b) Make unit employees whole by paying them all earned and accrued vacation pay, as provided in the collective-bargaining agreement, which has not been paid, in the manner described in the remedy section of this decision.

(c) On request, provide the Union with the information requested on or about March 22, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail signed and dated copies of the attached notice marked "Appendix,"[2] to the Union and to all unit employees employed as of the date the Respondent discontinued and closed its Chisholm, Minnesota facility. Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Amalgamated Clothing & Textile Workers Union, Northern District Joint Board, as the exclusive collective-bargaining representative of employees in the bargaining unit, about the effects of our discontinuance and closing of the Chisholm, Minnesota facility on the unit employees. The bargaining unit is:

All cutters, operators, shipping and receiving room employees, examiners, and all other related production workers employed at its Chisholm, Minnesota facility, including maintenance, services, janitorial employees, local truck drivers and helpers; excluding executives, administrators and supervisory employees as defined in the Act.

WE WILL NOT repudiate our collective-bargaining agreement with the Union by failing and refusing to pay unit employees their earned and accrued vacation pay as required under the terms of that agreement.

WE WILL NOT fail and refuse to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its function as the exclusive bargaining representative of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union regarding the effects of our discontinuance and closing of the Chisholm, Minnesota facility on the unit employees, and will put in writing any agreement reached as a result of such bargaining, and WE WILL pay unit employees limited backpay as required by the National Labor Relations Board, with interest.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make unit employees whole by paying them their earned and accrued vacation pay as required under the terms of the collective-bargaining agreement, with interest.

WE WILL, on request, furnish the Union with the information it requested on or about March 22, 1991.

LOKKLYNN, INC.